AT

UNITED NATIONS

Administrative Tribunal

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LIMITED

AT/DEC/761
26 July 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 761

Case No. 825: BOQUIST

Against: The Secretary General of the International Civil Aviation Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mayer Gabay; Ms. Deborah Taylor Ashford;

Whereas, on 20 June 1994, Jarl Reinhold Cay-Rune Boquist, a staff member of the International Civil Aviation Organization (hereinafter referred to as ICAO), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 27 October 1994, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal:

"PLEAS

"(a) ... to find that

(i) The ruling by the Chief, Personnel Branch of ICAO, dated 6 November 1991 (...) that the decision to pay mobility allowance to the Applicant be reversed, was not in accordance with ICAO Staff Rule 103.14; and

(ii) The decision by the Secretary General of ICAO dated 24 March 1994 not to agree to the conclusion of the Advisory Joint Appeals Board (AJAB) was unfounded in facts and law.

(b) ... to order that:

(i) The Respondent resume payment of mobility allowance to the Applicant with full retroactive payment of that allowance."

Whereas the Respondent filed his answer on 30 June 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of ICAO on 1 November 1979, as an Air Traffic Control Terminal Area/Airways Control Instructor, on loan from the Swedish Board of Civil Aviation, at the P-4 level. He served in Nigeria under the Technical Cooperation Programme of the Technical Assistance Bureau until 31 December 1980. On 1 January 1981, he was transferred to Ethiopia where he served as Air Traffic Control Training and Planning Expert until 31 December 1981. On 1 January 1982, he was transferred to Qatar as Chief Air Traffic Services Instructor, where he served until 31 December 1982, when he was recalled by the Swedish Board of Civil Aviation.

On 18 July 1984, the Applicant re-entered the service of ICAO, having resigned from the Swedish Board of Civil Aviation. He was assigned to Vietnam as Air Traffic Services Instructor until 18 July 1985. He was then transferred to Qatar, as Chief Air Traffic Control Instructor. Upon its expiration, his appointment was extended until 31 December 1989. On 1 January 1990, the Applicant was reappointed to the post of Technical Officer, Air Traffic Services and Search and Rescue Section, Air Navigation Bureau, on a three year fixed-term contract. His appointment was extended for two years, and with effect from 20 September 1994, was converted to a permanent appointment.

In a memorandum to the Chief, Personnel, dated 25 June 1991, the Applicant applied for the mobility hardship allowance, stating that he had served more than five consecutive years since 1984, in addition to his early service from 1979 to 1982, and that he had

served at six duty stations, as required by Staff Rule 103.14. On 10 October 1991, the Applicant was notified that payment of the allowance had been granted, with effect from 1 July 1990, to be paid "until further notice".

In a letter dated 6 November 1991, the Chief, Personnel informed the Applicant that although it had been "concluded initially" that he was entitled to the mobility hardship allowance, "subsequently, it was brought to our attention that we should not have counted your assignments in Nigeria, Ethiopia and Qatar from 1 November 1979 to 31 December 1982 since these assignments were followed by a break in service of more than one month ... We will therefore be obliged to discontinue the payment of this allowance to you and to recover the payment which was effected last month."

On 12 November 1991, the Applicant requested the Secretary General to review the decision to discontinue payment of his mobility hardship allowance. On 6 December 1991, the Applicant lodged an appeal with the Advisory Joint Appeals Board (AJAB). On 14 February 1994, the AJAB adopted its report. Its conclusions read as follows:

> "CONCLUSIONS
>
> 49. The Board concludes that, in the spirit of Staff Rule 103.14, and since the point at issue is not specifically covered by the Rule, the Appellant should be entitled to receive the mobility/hardship allowance from the time of his taking up his position in Montreal.
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> 50. The Board also recommends that, in future, moves between duty stations which take place before a break in service, should not necessarily be disregarded in calculating eligibility for the mobility/hardship allowance. Where the break in service is of such a length that it is nevertheless deemed that previous changes of duty station should not be counted for this purpose, the Board recommends that the point be expressly included in the staff member's contract of service on his first engagement after the break in service."

On 24 March 1994, the Secretary General informed the Applicant as follows:

> "I regret that I do not agree with the Board's findings and conclusions in this case. However, as an exceptional measure, I have decided that the Organization will not recover the sums already paid to [the Applicant] in this regard."

On 27 October 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The mobility hardship allowance is designed to provide an incentive for staff members who have served in the United Nations common system for five consecutive years to accept reassignment to a different duty station. The Applicant has served for five consecutive years.

2. While the requirement of five years' consecutive service is clearly spelled out in Staff Rule 103.14, there is no requirement that the service in four or more duty stations must be consecutive. Consequently, the Applicant qualifies for the mobility allowance.

Whereas the Respondent's principal contentions are:

1. The rationale for the mobility hardship allowance comprises two elements for eligibility - the requirement of five or more consecutive years and the number of assignments specified in the rule.

2. The assignment requirement must be seen as an additional element within the consecutive period specified by the rule.

The Tribunal, having deliberated from 9 to 26 July 1996, now pronounces the following judgement:

I. The Applicant requests that the Tribunal rescind the decision of the Chief, Personnel Branch of ICAO to stop payment of a mobility/hardship allowance, and uphold the decision of the Advisory Joint Appeals Board (AJAB) dated 6 July 1993, to order the Respondent to resume payment of the mobility/harship allowance, with full retroactive payment of that allowance.

II. The Applicant applied for the allowance on 25 June 1991, claiming that he had served ICAO from July 1984 to that date, i.e. more than the five consecutive years required, in addition to earlier service from November 1979 to December 1982. During these years, he had served at six duty stations (1979-1982 in Nigeria, Ethiopia, and Qatar and 1984-1991 in Vietnam, Qatar, and Montreal). In response to the Applicant's request, the payment of a mobility/hardship allowance was initially authorized. However, on 6 November 1991, the Chief, Personnel Branch informed the Applicant that he was not entitled to the allowance, as his assignments in Nigeria, Ethiopia, and Qatar were followed by a break in service of more than one month.

III. The Applicant contends that Staff Rule 103.14 governing the mobility/hardship allowance does not require the duty station assignments to be served consecutively. Relevant excerpts from Staff Rule 103.14 provide the following:

> "**Mobility**
>
> 8. The element for mobility is designed to provide an incentive for staff members who have served in the United Nations common system for five consecutive years to accept reassignment to a different duty station. ...
>
> 9. To be eligible for the inclusion of the element for mobility at category H duty stations for the fourth and later assignments, however, a staff member must have previously had at least two assignments at duty stations in a category other than H."

IV. The facts in this case are not in dispute. The case rests entirely on differing interpretations of Staff Rule 103.14, governing the award of a mobility/hardship allowance. The Applicant has served for more than five consecutive years. Prior to assuming his post in Montreal, he was stationed in Vietnam and Qatar, which are non-category H duty stations. The only issue is whether the Applicant's assignments at duty stations prior to his break in service should be counted towards the duty station requirement of the mobility/hardship allowance.

V. The language of Staff Rule 103.14 explicitly requires five years of consecutive service to qualify for the mobility/hardship allowance, but does not discuss the effect of breaks in service between duty station assignments on staff eligibility for the allowance. The oral proceedings held by the AJAB on this case illuminate the meaning of certain statements by the Respondent and the process by which the Applicant's mobility/hardship allowance was granted and then revoked. The Applicant was initially granted the allowance by the Personnel Branch. At the AJAB oral proceedings, the Personnel Officer testified that there was nothing in the rules governing the mobility/hardship allowance which precluded the Applicant from receiving it. She further testified that "payment of the allowance had been withdrawn after consultations with ... Chief, Field Personnel Section, Technical Co-operation Bureau (TCB), who had informed the Personnel Branch that the TCB considered a break in service as a disqualifier to payment of the allowance." The Personnel Branch then modified its interpretation of the Rule to be consonant with the TCB. It was further determined at the AJAB oral proceedings that other organizations such as WHO, UNESCO and UNDP pay the allowance, irrespective of any breaks in service between assignments, provided the staff member has served in the UN common system for five consecutive years.

VI. The Respondent argues that requiring consecutive duty station assignments is a reasonable interpretation of the Rule that falls within the purview of the Secretary-General's discretionary authority. He further contends that without such a requirement, the allowance would "merely amount to a 'savings plan' that would provide staff members that have collected enough service years and assignments in their UN career, regardless of interruptions, with the benefits of the allowance."

VII. The AJAB found that:

> "... in the absence of a reference in the Staff Rule to the point of contention, the case hinges specifically on the purpose for which the allowance was conceived. The mobility component of the allowance appears to be intended to compensate a staff member for the disruptions to his or her life entailed by moves from one domicile to another. Such disruptions are a function of the moves themselves, and will be experienced even if the move is to or from the home country. The Board therefore considers that, in this case, the Appellant's break in service should not be a factor in calculating his eligibility for the allowance."

The Tribunal agrees with the AJAB. Paragraph 8 of Staff Rule 103.14 sets forth the requirement of five consecutive years of service. Paragraph 9, independently, sets forth the requirement of four duty stations assignments, including at least two hardship duty stations assignments, without reference to paragraph 8 or to the consecutive service requirement set forth therein. The Tribunal finds that the language of Staff Rule 103.14 does not require duty station assignments to be served consecutively. This interpretation of the Rule is consistent with the objective sought through the mobility/hardship allowance.

VIII. For the foregoing reasons, the Tribunal finds that the Applicant fulfills the eligibility requirements for the mobility/hardship allowance and is entitled to receive it.

IX. For the foregoing reasons, the Tribunal orders the Respondent to resume payment of the mobility/hardship allowance and make full retroactive payment of that allowance with 8 per cent interest from the date on which the allowance was discontinued until the date of its reinstatement.

All other pleas are rejected.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mayer GABAY
Member

Deborah Taylor ASHFORD
Member

Geneva, 26 July 1996

R. Maria VICIEN-MILBURN
Executive Secretary